Petition

81-1556

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. -

ANDREW J. NAREL, JR.

Petitioner,

v.

VICTOR LIBURDI, WARDEN,
COMMUNITY CORRECTIONAL CENTER, BRIDGEPORT

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE CONNECTICUT SUPREME COURT

Submitted by:

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QUESTIONS PRESENTED

I. WHETHER A STATE THAT IS PARTY TO THE INTERSTATE AGREEMENT ON DETAINERS MAY DENY AN OUT-OF-STATE INMATE HIS STATUTORY RIGHTS UNDER THE DETAINER AGREEMENT TO A PRE-TRANSFER HEARING BY SEEKING TO GAIN CUSTODY OF HIM UNDER THE UNIFORM CRIMINAL EXTRADITION ACT RATHER THAN THE APPLICABLE PROVISIONS OF THE DETAINER AGREEMENT.

II. WHETHER THE INTERSTATE AGREEMENT ON DETAINERS IS THE EXCLUSIVE STATUTORY MECHANISM FOR CUSTODY TRANSFER OF INMATES BETWEEN STATES PARTY TO THE AGREEMENT.

III. WHETHER AN INMATE MAY CONTEST INTERSTATE EXTRADITION ON THE GROUND THAT HE HAS BEEN DENIED HIS RIGHT TO SPEEDY TRIAL UNDER THE INTERSTATE AGREEMENT ON DETAINERS.

IV. WHETHER PETITIONER'S EXTRADITION FROM CONNECTICUT TO VIRGINIA IS BARRED BY THE VIOLATION OF PETITIONER'S RIGHT TO SPEEDY TRIAL UNDER THE INTERSTATE AGREEMENT ON DETAINERS ON THE PENDING VIRGINIA CHARGE.

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IN THE

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OCTOBER TERM, 1981

NO.

ANDREW J. NAREL, JR.

PETITIONER,

V.

VICTOR J. LIBURDI, WARDEN, CONNECTICUT CORRECTION CENTER, BRIDGEPORT,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE CONNECTICUT SUPREME COURT

The petitioner Andrew J. Narel, Jr., prays that a writ of certiorari issue to review the judgment of the Connecticut Supreme Court rendered on December 15, 1981.

OPINIONS BELOW

The opinion of the Connecticut Supreme Court is not yet officially reported. The opinion is unofficially reported at 43 Conn.L.J., No. 24, p. 9 (Dec. 15, 1981), and is attached hereto as Appendix A. The order of the trial court is unreported and is attached hereto as Appendix B.

JURISDICTION

The opinion of the Connecticut Supreme Court was rendered on December 15, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article Four, Section 2, cl. 2 of the Constitution of the United States provides, as follows:

> A person charged in any State with Treason, Felony or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime.

The Fifth Amendment of the United States Constitution provides, in pertinent part, as follows:

> No person shall be ... deprived of life, liberty or property without due process of law.

The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part, as follows:

> No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This case involves the interpretation of two uniform multi-state acts, the Interstate Agreement on Detainers and the Uniform Criminal Extradition Act. The statutes are reprinted in full in Appendices C and D, pp. 13a - 32a, infra.

STATEMENT OF THE CASE

Petitioner instituted this habeas corpus action in Connecticut state court in December 1978 to contest his extradition from Connecticut to Virginia pursuant to the provisions of the Uniform Criminal Extradition Act. Petitioner contended that Virginia's violation of the speedy trial provisions of the Interstate Agreement on Detainers precluded his extradition under the Extradition Act. (A copy of petitioner's petition for writ of habeas corpus is attached hereto as Appendix E.)

Petitioner's claims were premised on his unsuccessful attempts to obtain a speedy trial under the Detainer Agreement on a detainer charge lodged against him by Virginia during the course of his incarceration at the Federal Correctional Institution at Danbury, Connecticut. Despite petitioner's request to his federal custodians for assistance in obtaining disposition of the Virginia charge within the 180 day time limit established by Article III of the Agreement and despite petitioner's motion for speedy trial to the Virginia court, Virginia took no action on the detainer for over fifteen months. Only after petitioner's release from custody did Virginia finally seek to bring petitioner to trial — seeking petitioner's extradition under the Extradition Act, rather than transfer under the applicable provisions of the Detainer Agreement. In his petition, petitioner contended that his extradition was barred by Virginia's failure to bring him to trial within the 180 day time limit established by Article III of the Detainer Agreement. In the petition, petitioner specifically asserted violations of his rights under the Fifth and Fourteenth Amendments to the United States Constitution, as well as under the Interstate Agreement on Detainers. (Pet. App. 34a).

After an evidentiary hearing on the petition, the trial court dismissed petitioner's action by brief oral order. (Pet. App. 12a) On appeal to the Connecticut Supreme Court, the respondent did not contest the facts established by petitioner as to his attempts to obtain a trial in Virginia, nor did he dispute that petitioner's rights to speedy trial under the Interstate Agreement on Detainers had been violated. Respondent contended solely that petitioner had no right assert a claimed violation of his rights under the Detainer Act at a hearing under the Extradition Act. Respondent asserted that any such claims could be litigated solely in Virginia, upon petitioner's transfer there.

In reply to this contention, petitioner contended that as a matter of federal law, he was entitled to a statutory hearing prior to transfer under the Detainer Agreement and that the right to such a hearing could not be denied by Virginia's resort to the Extradition Act for petitioner's transfer. (Pet. App. 35a - 39a) Petitioner further contended that Virginia could not, consistent with the equal protection clause of the Fourteenth Amendment, deny petitioner his rights under an applicable statutory procedure by arbitrary invocation of a less protective statutory mechanism for transfer. (Id. at 39a - 40a).

The Connecticut Supreme Court rejected petitioner's contentions, holding that petitioner had no right to litigate in Connecticut his asserted claims of noncompliance with the provisions of the Detainer Agreement. (Pet. App. 6a-8a). The Connecticut court held that the only issues cognizable in an extradition proceeding were those pertaining to extradition set forth in Michigan v. Doran, 439 U.S. 282 (1978), (id. at 3a - 4a), and that petitioner was not entitled to attack

his transfer under the Extradition Act on the basis of claims arising under the Detainer Act. (Id. at 8a).

The judgment of the Connecticut Supreme Court upholding petitioner's extradition has been stayed pending a ruling on this petition for certiorari. (Id. at 11a).

REASONS FOR GRANTING THE WRIT

The decision below improperly construes the relationship between the Interstate Agreement on Detainers and the Uniform Criminal Extradition Act and is in conflict with holdings of this Court and other lower courts.

The principal issue presented in this case is whether a State that is party to the Interstate Agreement on Detainers may deny an out-of-state inmate his statutory right to a pre-transfer hearing on its compliance with the Agreement by seeking to gain custody of him under the provisions of the Uniform Criminal Extradition Act, rather than through the applicable transfer mechanism of the Detainer Agreement.

The law is now clear that when a state seeks custody of an inmate pursuant to the Detainer Agreement, the inmate has the right to a judicial hearing prior to the transfer to challenge the propriety of his custody transfer. Cuyler v. Adams, 449 U.S. 433, 66 L.E.2d 641, 654-55 (1981); Moen v. Wilson, 536 P.2d 1129, 1133, 189 Colo. 85 (1975); State ex rel. Garner v. Gray, 201 N.W.2d 163, 170, 55 Wis.2d 574 (1972). At such a hearing, the inmate has the right to challenge the demanding state's compliance with the requirements of both the Extradition Act and the Detainer Agreement.

Cuyler v. Adams, supra; Allen v. Evans, 562 P.2d 752, 753-54 (Colo. 1977). Moen v. Wilson, supra; State ex rel. Garner v. Gray, supra.

The Connecticut Supreme Court held that even though the Commonwealth of Virginia had lodged a detainer against petitioner and even though petitioner had attempted to invoke the speedy trial provisions of Article III of the Agreement in response to the detainer, petitioner was not entitled to a pre-transfer hearing to litigate his claims of non-compliance with the Agreement. (Pet. App. 6a-8a) The Connecticut court held that the only issues cognizable in an extradition hearing are those pertaining to extraditability set forth in Michigan v. Doran, 439 U.S. 282 (1978). (Id. at 3a-4a) The Connecticut court ruled that any claims under the Interstate Agreement on Detainers could be asserted only in Virginia after transfer. (Id. at 8a-9a).

The ruling below is in conflict with holdings of the United States Court of Appeals for the Third Circuit, which has ruled that the Detainer Agreement is the exclusive method of effecting a transfer of prisoners between party states. United States ex rel. Esola v. Groomes, 520 F.2d 830, 837 (3rd Cir. 1975); Adams v. Cuyler, 592 F.2d 720, 725 (3d Cir. 1979), aff'd. sub nom., Cuyler v. Adams, 449 U.S. 433 (1981); cf., Commonwealth ex rel. Coleman v. Cuyler, 396 A.2d 394, 400, 261 Pa.Super. 274 (1978).

As the Third Circuit has held in this regard:

> If the state authorities were to have the option of utilizing either the Extradition Agreement or the Detainer Agreement, the speedy trial provisions of the Agreement

> and its protection against the abuses of the detainer process could be thwarted.

Adams v. Cuyler, supra at 725.

The ruling below is also in conflict with this Court's recent holding in Cuyler v. Adams, 449 U.S. 433, 66 L.E.2d 641 (1981). In Adams, the Court recognized that the Detainer Agreement and Extradition Act provide parallel statutory mechanisms for interstate transfer of inmates and overlapping statutory protections. Id. at 650-54. In Adams, the Court held that an inmate being transferred pursuant to the Detainer Agreement is statutorily entitled to a hearing prior to transfer, id. at 654-55, and at that hearing is entitled to assert claims existing under the Extradition Act. Id. at 655.

In Adams, the Court relied on statutory analysis in holding that the language of the Detainer Agreement did not preempt the protections afforded an inmate under the Extradition Act. Id. at 652-54. Similarly, the language of the Uniform Criminal Extradition Act (adopted by Connecticut, Section 54-157, C.G.S., et seq.) does not purport to deny petitioner the protections of the Detainer Agreement. Section 54-158 expressly provides that a state's duty to extradite is subject not only to the provisions of the Extradition Act but to "the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof." (Pet.App. 21a, emphasis added). The Detainer Agreement is precisely such an act of Congress. As the Court explicitly held in Adams, the Detainer Agreement "is a congressionally sanctioned interstate compact the interpretation of which presents a question of federal law." Cuyler v. Adams, supra at

650. "Congressional power to legislate in this area is derived from both the Commerce Clause and the Extradition Clause." Id. at n. 10. The statutory language of the Uniform Criminal Extradition Act in setting forth a state's duties under the Act thus plainly indicates that such duties are subject to the provisions of the Detainer Agreement. Id. at 654.

Although statutory construction supports petitioner's right to a pre-transfer hearing, an even more compelling constitutional rationale mandates acceptance of petitioner's argument. This Court has held that a state may not, consistent with the Equal Protection Clause, deprive an individual of rights available under one of two applicable statutes by arbitrarily invoking the statute with lesser protections. Baxstrom v. Herold, 383 U.S. 107 (1966); Humphrey v. Cady, 405 U.S. 504 (1972). In Baxstrom, the Court reviewed two New York statutes pertaining to civil commitment procedures. One of the statutes afforded individuals a right to jury trial prior to commitment, while the other statute denied a similar right to convicted inmates being committed at the end of their penal sentences. The Court held that the arbitrary use of the different statutory procedures to deny certain individuals a right to jury trial violated the Equal Protection Clause. Id. at 115.

Six years later, the Court considered two Wisconsin statutes similarly providing different procedural protections for commitment of sex offenders. Humphrey v. Cady, supra. Noting that the statutes were on their face each applicable to the same individuals, the Court reiterated its holding in Baxstrom, stating:

> The equal protection claim would seem to be especially persuasive if it develops on remand that petitioner was deprived of a jury determination, or of other procedural protections, merely by the arbitrary decision of the State to seek his commitment under one statute rather than the other.

Id. at 512.

Relying on Baxstrom and Humphrey, the Wisconsin Supreme Court has held that an equal protection violation would occur if a state were allowed to deprive an inmate of his statutory rights under the Extradition Act by seeking custodial transfer under the Detainer Agreement. State ex rel. Garner v. Gray, 201 N.W.2d 163, 168-69, 55 Wis.2d 574 (1972). A similar constitutional violation would result if, as here, an inmate were denied his review rights under the Detainer Agreement by a demanding state's reliance on the Extradition Act. Baxstrom v. Herold, supra; Humphrey v. Cady, supra.

Michigan v. Doran, 439 U.S. 282 (1978), the case primarily relied upon by the court below does not compel a different conclusion. Doran was decided prior to Adams and must be read in light of Adams' explication of the federal rights created by the Detainer Agreement and the complementary relationship between the Detainer Agreement and the Extradition Act. Cuyler v. Adams, supra at 650-54. Doran did not involve any claim under the Detainer Agreement, nor did the Court in Doran purport to preclude a petitioner's assertion at an extradition hearing of rights existing under other federal law. Indeed, as noted

above, the Uniform Criminal Extradition Act specifically requires compliance with "any and all (applicable) acts of Congress." The lower court's narrow interpretation of Doran fails to recognize the impact of Adams and would, in the circumstances presented in this case, give rise to the equal protection violation condemned in Baxstrom, Humphrey and Garner.

Review of the holding below is especially appropriate, therefore, to clarify the interrelationship of this Court's holdings in Doran and Adams.

Petitioner thus submits that he has a right to judicial review in Connecticut of the propriety under both the Detainer Agreement and Extradition Act of his custody transfer to Virginia. Petitioner further submits that such right cannot be denied by Virginia's invocation of the Extradition Act rather than the Detainer Agreement as the statutory vehicle for transfer.[1]

The holding below fails to recognize such right and is in conflict with decisions of this Court and the United States Court of Appeals for the Third Circuit. Petitioner's petition for writ of certiorari should be granted to enable the Court to clarify the relationship between the Interstate Agreement on Detainers and the Uniform Criminal Extradition Act and the procedures and protections applicable to interstate custody transfers of inmates.

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1. In his brief on appeal to the Connecticut Supreme Court, respondent explicitly conceded he did not contest the accuracy of the facts relied upon by petitioner below, (Resp. Brief, p.3), and such facts were found by the Connecticut Supreme Court in its opinion (Pet. App. 1a-2a). While petitioner seeks review of whether his extradition to Virginia is barred by such violation, see Questions Presented, IV, should this Court

CONCLUSION

For the foregoing reasons, petitioner prays that his Petition for Writ of Certiorari be granted.

THE PETITIONER,
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(fn 1 cont.) conclude that the lower court incorrectly declined to review the merits of petitioner's claims, this Court could remand to the state court for review of the merits.

Lower state and federal courts have consistently held, on the basis of facts similar to those established by petitioner below, that a violation of the 180 day speedy trial provision of the Detainer Agreement has occurred. Pittman v. State, 301 A.2d 509 (Del. 1973); McBride v. United States, 393 A.2d 123 (D.C. 1978); Lovitt v. State, 592 S.W.2d 133 (Ky. 1980); State v. Seadin, 593 P.2d 451 (Mont. 1979); Burns v. State, 578 S.W.2d 650 (Tenn.Cr.App. 1978); United States v. Hutchins, 489 F.Supp. 710 (N.D.Ind. 1980); Rockmore v. State, 21 Ariz.App. 388, 519 P.2d 877 (1978); People v. Diaz, 94 Misc.2d 1010, 403 N.Y.S.2d 239 (1978); People v. Wilson, 69 Cal.App.3d 631, 138 Cal.Rptr. 259 (1977); People v. Lincoln, 601 P.2d 641 (Colo.Ct.App. 1979); cf., United States v. Mauro, 436 U.S. 340, 364-65, (1978).

CERTIFICATE OF SERVICE

This is to certify that two copies of the foregoing Petition for Writ of Certiorari were mailed, postage pre-paid, to Carl Schuman, Esq., Assistant State's Attorney, P.O. Box 5000, Wallingford, Connecticut this 13th day of February, 1982.

/s/ DAVID S. GOLUB
DAVID S. GOLUB

Appendix

APPENDICES

APPENDIX A: OPINION OF CONNECTICUT SUPREME COURT

SUPREME COURT

October Term, 1981

ANDREW J. NAREL, JR. V. VICTOR LIBURDI, WARDEN, COMMUNITY CORRECTIONAL CENTER, BRIDGEPORT

Argued October 14 — Decision Released December 15, 1981

Petition for writ of habeas corpus, brought to the Superior Court in the judicial district of Danbury and tried to the court, Sullivan, J.; judgment dismissing the petition, from which the plaintiff appealed to this court. No error.

PARSKEY, J. This case involves the relationship of the Uniform Criminal Extradition Act, General Statutes Section 54-157 through 54-158, and the Interstate Agreement on Detainers, General Statutes Section 54-186 through 54-192. The precise question presented by this appeal is whether, if we assume that the plaintiff has properly invoked his rights under the agreement on detainers, the failure of the charging state to bring him to trial within the time limit prescribed by the detainer agreement precludes that state from invoking the provisions of the extradition act. The short answer to that question is "no."

In 1977, the plaintiff was being held in custody in the federal correctional institute at Danbury, Connecticut. On September 6, 1977, the commonwealth of Virginia filed a detainer with the prison authorities

at Danbury notifying them of an outstanding escape charge. When the plaintiff learned of the detainer he contacted Robert Flynn, an official in the records department at Danbury, and orally requested Flynn to send a notice to Virginia seeking prompt disposition of the escape charge pursuant to the Interstate Agreement on Deainers, 18 U.S.C. Ap. (1976), pp. 1395-98; Va. Code Sec.53-304.1. Flynn refused to send the notice and told the plaintiff to file his own motion for a speedy trial. The plaintiff thereupon prepared a notarized motion for speedy trial which he sent to the Manassas, Virginia court. This motion, the receipt of which was acknowledged by the clerk's office at the 31st Judicial District of Virginia, Prince William General District Court, Manassas, Virginia, made specific reference to the details of the charge of escape lodged against the plaintiff the commonwealth of Virginia on September 6, 1977, and requested a speedy trial of the charge. The motion, which was prepared on a form made available to the plaintiff at the federal prison, was sworn to before Ron Simpson, a caseworker at Danbury.

The Virginia authorities took no action on the pending escape charge against the plaintiff until he had completed his federal sentence and was released from federal custody on September 1, 1978. At that time, he was arrested on a fugitive warrant issued by the commonwealth of Virginia and thereafter was held under a rendition warrant issued by the governor of this state as a result of a requisition made upon him by the governor of Virginia. The plaintiff filed a habeas corpus petition which, after an evidentiary hearing, was dismissed and this appeal followed. While the trial court dismissed the petition for failure of the plaintiff to satisfy the notice requirements of the agreement on detainers, the view we take of this case makes it unnecessary for us to reach that issue.

I

The extradition clause of the constitution of the United States, article four, Section 2, cl.2, provides: "A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime." The extradition act implements this clause by providing the procedural mechanism for the summry disposition of extradition cases. Glavin v. Warden, 163 Conn. 394, 395n., 311 A.2d 86 (1972). The hearing in such cases is limited to four questions, namely, (a) whether the extradition documents on their face are in order, (b) whether the plaintiff has been chaged with a crime in the charging state, (c) whether the plaintiff is the person named in the request for extradition and (d) whether the plaintiff is a fugitive. Cuyler v. Adams, 449 U.S. 433, 433n., 101 S.Ct. 703, 66 L.Ed. 2d 641 (1981); Michigan v. Doran, 439 U.S. 282, 289, 99 S.Ct. 530, 58 L. Ed. 2d 521 (1978). The custodial court may not inquire into the merits of the charge or into any claimed procedural infirmities, constitutional or otherwise, lurking in the prosecution. Michigan v. Doran, supra; Ross v. Hegstrom, 157 Conn. 403, 409, 254 A.2d 556 (1969); Rosenberg v. Slavin, 122 Conn. 304, 308, 188 A.2d 272 (1936). Such matters are to be determined by the court in the charging state. Ross v. Hegstrom, supra. Questions involving the status of the charge or the status of the petitioners as a fugitive from justice, however, are appropriate issues to be determined by the courts in the custodial state. Ross v. Hegstrom, supra, 410. For example, if subsequent to the issuance of the formal documents by the governors of the appropriate states, the plaintiff received a pardon for the crime charged, or the charge was nolled by the prosecution or dismissed by the court, it could not seriously be questined that the plaintiff would no longer be subject to an outstanding charge nor could it

be seriously questioned that the court in the custodial state could not examine the pertinent documents for the purpose of determining the status of the charge. See Moulthrope v. Matus, 139 Conn. 272, 278, 93 A.2d 149, cert. denied, 345 U.S. 926, 73 S.Ct. 785, 97 L. Ed. 1357 (1952).

In sum, while both the extradition clause and the extradition act contemplate the prompt return of a fugitive from justice as soon as the state from which he fled demands him and, to assure such return, preclude the asylum state from engaging in a plenary review of the charge; Michigan v. Doran, supra; 289-90; Sweeney v. Woodall, 344 U.S. 86, 73 S. Ct. 139, 97 L. Ed. 114 (1952), reh. denied, 344 U.S. 916 73 S.Ct. 332, 97 L. Ed. 702 (1953); this does not mean that the asylum court is merely a clerical functionary in extrradition matters. To the contrary, in the limited area within which it operates, the judicial authority of the asylum court is undminished. See Ross v. Hegstrom, supra, 410. This brings us to the heart of the issue in this case, namely, the applicability and effect of the detainer agreement.

II

The detainer agreement is an interstate compact[1] and as such its interpretation is a matter of federal law. Cuyler v. Adams, 449 U.S. 433, 442, 101 S. Ct. 703, 66 L. Ed. 641 (1981). Article I of the act, noting "that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation," states that the purpose of the agreement is "to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints."

The detainer agreement contains two trigger mechanisms. The provisions of the agreement itself are activated only when the receiving or charging state lodges with the sending or asylum state a detainer based on a pending indictment, information or complaint. People v. Lincoln, 42 Colo. App. 512, 514, 601 P.2d 641 (1979); Burns v. State, 578 S.W. 2d 650, 652 (Tenn. Cr. App. 1978). At that point the time clock can be activated by the detainee, under article III, or by the prosecuting authority in the charging state, under article IV.[2] In this case, the applicable provision is article III.

To initiate proceedings under article III, the detainee must give or send to his custodian in the asylum state a written request for final disposition of the charge lodged against him in the charging state and shall cause to be delivered to the prosecuting officer and the appropriate court of the prosecutor's jurisdiction written notice of the place of his imprisonment and of his request for final disposition. The initial burden is on the custodian to inform the detainee of the source and contents of any detainer lodged against him and to inform him of his right to make a request for final disposition of the pending charge. Article III(c). Thereafter the burden is on the detainee to give or send to his custodian his written notice and requst. Article III(b). The notice and request must be accompanied by a certificate of the custodian state specified information pertaining to the detainee's confinement. Article III(a). The duty is on the custodian to forward the written notice, request and certificate promptly to the appropriate prosecuting authority and court by registered or certified mail, return receipt requested. Article III(b).

III

The detainer agreement sets forth specific sanctions for failure of the charging state to bring the

detainee to trial within the prescribed time limits. First, the pending charge is nullified. Second, the charge is required to be dismissed with prejudice and third, the detainer is invalidated. The circumstance under which the sanctions are imposed are spelled out in the agreement. Nullification of the charge occurs only in situations where the detainee has been returned to the charging state. Article III(d) provides: "If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice." A similar provision, in Article IV(e), covers situations where the prosecuting authority is the moving party. Dismissal of the charge with prejudice can only ocur in the charging state. Obviously, the asylum court, lacking extraterritorial jurisdiction, is powerless to dismiss the underlying charges.

Under article V(c), in cases of refusal or failure of the charging state to accept temporary custody of the detainee, "the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force and effect." Thus, a fair reading of the detainer agreement leads inexorably to the conclusion that remedial relief under the agreement must be sought in the charging state, in this case in the commonwealth of Virginia.

IV

Even when the plaintiff's situation is viewed in light of the purposes to be served by the agreement, the charging state is the appropriate jurisdiction for remedial relief. Any relief granted by the asylum state would be at best only temporary and evanescent.

Beause the charging state is not, nor is it required to be, a party to the extradition hearing in the asylum state; Sweeny v Woodall, supra; it is not bound by the results of that hearing. Let us assume, despite the textual language to the contrary, that upon the expiration of the prescribed time limits the pending charge loses its viability. In the absence of a dismissal with prejudice, there would be nothing to prevent the charging state from instituting a prosecution for the underlying offense based on a new charge and thereafter seeking extraditon anew. Upon transfer of the detainee to the charging state, the Connecticut judgment would not be a bar to the trial of any of the issues raised by the plaintiff before the trial court in this case. Furthermore, with the institution of a new prosecution, a new detainer could be lodged against the plaintiff were he at that time incarcerated in a correctional institution in this state. It is a cardinal rule of statutory construction that a statute is not to be construed so as to thwart its purpose. Evening Sentinel v. National Organization for Women, 168 Conn. 26, 31, 357 A.2d 498 (1975). Therefore, the reading which we give to the detainer agreement not only conforms to its language but, equally important, achieves its central purpose, namely, to secure a speedy and definitive disposition of pending charges for prisoners subject to detainers.

V

Finally, we note the practice of courts in charging states routinely to dismiss with prejudice underlying charges against prisoners whose custodians have failed to comply with the procedural requirements of the detainer agreement. See e.g., Rockmore v. State, 21 Ariz. App. 388, 519 P.2d 877 (1974); People v. Esposito, 37 Misc. 2d 386, 238 N.Y.S.2d 460 (1960); State v. Black, 594 S.W.2d (Tenn. Crim. App. 1979); Burns v. State, 578 S.W.2d. 650 (Tenn. Crim. App. 1978); Nelms v. State, 532 S.W.2d 923 (Tenn. 1976). In this

regard, custodial officials in the asylum and the charging states are viewed as agents for each other. People v. Diaz, 94 Misc. 2d 1010, 1014, 406 N.Y.S.2d 239 (1978). If we assume the facts as stated by the plaintiff, the commonwealth of Virginia can adequately protect his rights by granting the plaintiff an opportunity to be heard on the notice issue. Sweeney v. Woodall, 344 U.S. 86, 90, 73 S. Ct. 139, 97 L. Ed. 114 (1952), reh. denied, 344 U.S. 916, 73 S. Ct. 332, 97 L. Ed. 706 (1953). We find that the detainer agreement does not bar the extradition proceding in this case because there exists an outstanding charge against the plaintiff. It is not incumbent upon this court to decide whether the plaintiff has satisfied the agreement's requirements and is thereby entitled to have his charge dismissed with prejudice. Although the trial court dismissed the petition for lack of proper notice under the agreement, we affirm the decision because it nevertheless reached the correct result. Favorite v. Miller, 176 Conn. 310, 317 407 A.2d 974 (1978).

There is no error.

In this opinion the other judges concurred.

Notes

1. The Interstate Agreement on Detainers has been adopted by the United States, the District of Columbia and all of the states with the exception of Alaska, Louisiana and Mississippi, 11 U.L.A. (1981 Sup.) 90.

2. "General Statutes Sec. 54-186. AGREEMENT. The Agreement on Detainers is hereby entered into by this state with all jurisdictions legally joining therein in form substantially as follows: The contracting states solemnly agree that: ...

Article III

"(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institute of a party state, and whenever during the continuance of the term of the imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

"(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

"(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the

indictment, information or complaint on which the detainer is based.

"(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

"(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the

provisions of this agreement. Nothing in this paragraph shall prevent the disposition of a concurrent sentence if otherwise permitted by law.

"(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request."

NO. 9561 : SUPREME COURT

ANDREW NAREL : STATE OF CONNECTICUT

V. :

WARDEN (VICTOR LIBURDI) : JANUARY 12, 1982

ORDER

THE PLAINTIFF'S MOTION FOR STAY

HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY

ORDERED THAT THE EXECUTION AND ENFORCEMENT OF JUDGMENT BE STAYED FOR SIXTY DAYS, OR UNTIL THE SOONER PETITION FOR A WRIT OF CERTIORARI, PROVIDED THAT SHOULD CERTIORARI BE GRANTED THEN THE STAY SHALL CONTINUE UNTIL THE DECISION BY THAT COURT ON THE ISSUES RAISED IN THE PLAINTIFF'S APPEAL.

BY THE COURT

CHIEF CLERK

APPENDIX B: ORDER OF TRIAL COURT

ORDER

It is found that "Notice" is not found in accordance with CGS 54-186. The Petitioner is charged with escape. The Petitioner is the Andrew J. Narel, Jr. named in the warrant from the State of Virginia. The Petitioner was in Virginia on the date set forth in the Governor's warrant (i.e. April 3, 1975). Under the Interstate Agreement on Detainer's Act the petitioner is a fugitive from justice and should be extradited.

It is hereby ordered that the Habeas Corpus petitioner is Denied and that the Petitioner will be extradited to the State of Virginia. Execution is to be stayed for the purpose of filing an appeal, for 20 days. Bond is raised to $50,000.00.

By the Court (Sullivan, J.)

/s/
Assistant Clerk

March 13, 1979

APPENDIX C: TEXT OF THE INTERSTATE AGREEMENT ON DETAINER

AGREEMENT ON DETAINERS

54-186. Agreement

The Agreement on Detainers is hereby entered into by this state with all jurisdictions legally joining therein in form substantially as follows: The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement: (a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico. (b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III hereof or at the time that a request for custody or availability is initiated pursuant to article IV hereof. (c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to article III or article IV hereof.

AGREEMENT ON DETAINERS

Article III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of the imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. (b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested. (c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on

which the detainer is based. (d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other oficial having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice. (e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law. (f) Escape from custody by the prisoner subsequent to his execu-

AGREEMENT ON DETAINERS

tion of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner. (b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor. (c) In respect of any proceeding made possible by this article, trial shall be com-

menced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for the good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. (d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery. (e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V

(a) In response to a request made under article III or article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian. (b) The officer or other representative of a state accepting an offer of temporary custody shall present the

AGREEMENT ON DETAINERS

following upon demand: (1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given. (2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made. (c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III or article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect. (d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution. (e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state. (f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow. (g) For all purposes other than that for which temporary custody as provided in this agreememt is exercised, the prisoner shall

be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law. (h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI

(a) In determining the duration and expiration dates of the time periods provided in articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter. (b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

AGREEMENT ON DETAINERS

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

APPENDIX D: TEXT OF THE UNIFORM CRIMINAL EXTRADITION ACT

UNIFORM CRIMINAL EXTRADITION ACT

Sec. 54-157. Definitions. Where appearing in this chapter, the term "governor" includes any person performing the functions of governor by authority of the law of this state. The term "executive authority" includes the governor and any person performing the functions of governor in a state other than this state. The term "state," referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.

Sec. 54-158. Governor's duty to arrest and deliver up fugitive. Subject to the provisions of this chapter, the provisions of the constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this state.

Sec. 54-159. Requirements for recognition of extradition demand. No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under section 54-162, that the accused was present in the demanding state at the time of the commission of the alleged crime and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant

which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of convictions or sentence must be authenticated by the executive authority.

Sec. 54-160. State's attorney and prosecuting attorney to assist governor. When a demand is made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon any state's attorney or prosecuting attorney in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

Sec. 54-161. Return to this state of person imprisoned or held in another state. When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated. The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in section 54-179 with having violated the laws of the state whose

executive authority is making the demand, even though such person left the demanding state involuntarily.

Sec. 54-162. Return to another state of person whose act in this state caused crime. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 54-159 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this chapter not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime and has not fled therefrom.

Sec. 54-163. Arrest warrant signed by governor. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant shall substantially recite the facts necssary to the validity of its issuance.

Sec. 54-164 Authorization under warrant. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he is found within the state and to command the aid of all peace officers or other persons in the execution of the warrant and to deliver the accused, subject to the provisions of this chapter, to the duly authorized agent of the demanding state.

Sec. 54-165. Power of arresting officer. Every such officer or other person empowered to make the arrest shall have the same authority, in arresting the accused, to command assistance therein as peace officers have by law in the execution of any criminal process directed

to them, with like penalities against those who refuse their assistance.

Sec, 54-166. Appearance of accused in court. Habeas corpus. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him has appointed to receive him unless he is first taken forthwith before a judge of any court having criminal jurisdiction in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel states that he or they desire to test the legality of his arrest, the judge of such court shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the state's attorney of the county in which the arrest is made and in which the accused is in custody, and to the agent of the demanding state.

Sec. 54-167. Penalty for failure of officer to present accused in court. Any officer who delivers to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in wilful disobedience to section 54-166, shall be fined not more than one thousand dollars or be imprisoned not more than six months or both.

Sec. 54-168. Confinement, when. The officer or person executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner has been delivered, may, when necessary, confine the prisoner in any community correctional center or in the jail of any city through which he passes; and the community correctional center administrator or the keeper of such jail shall receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being

chargeable with the expense of keeping. The officer or agent of a demanding state to whom a prisoner has been delivered following extradition proceedings in another state, or to whom a prisoner has been delivered after waiving extradition in such other state, and who is passing through this state with such prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in any community correctional center or in the jail of any city through which he passes; and the community correctional center administrator or keeper of such jail shall receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent being chargeable with the expense of keeping; provided such officer or agent shall produce and show to the community correctional center administrator or the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after requisition while in this state.

Sec. 54-169. Arrest warrant of judge. Whenever any person within this state is charged on the oath of any credible person before any judge of any court of this state having criminal jurisdiction with the commission of any crime in any other state, and except in cases arising under section 54-162, with having fled from justice, or having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint has been made before such judge in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime and, except in cases arising under section 54-162, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail,

probation or parole, and is believed to be in this state, the judge shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same of any other judge or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

Sec. 54-170. Arrest without warrant. The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant, upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused shall be taken before such a judge with all practicable speed and complaint shall be made against him under oath setting forth the ground for the arrest as in section 54-169; and therafter his answer shall be heard as if he had been arrested on a warrant.

Sec. 54-171. Commitment pending governor's warrant. If from the examination before the judge it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under section 54-162, that he has fled from justice, the judge shall, by a warrant reciting the accusation, commit him to a community correctional center for such a time, not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor or a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused gives bail as provided in section 54-172, or until he is legally discharged.

Sec. 54-172. Allowance and conditions of bail bond. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, such a judge in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditions for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the governor of this state.

Sec. 54-173. Discharge or recommitment after expiration of period specified in warrant or bond. If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, such judge may discharge him or may recommit him for a further period not to exceed sixty days, or a judge may again take bail for his appearance and surrender as provided in section 54-172, but within a period not to exceed sixty days after the date of such new bond.

Sec. 54-174. Forfeiture of bond. If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he is within the state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

Sec. 54-175. Surrender of person against whom criminal prosecution pending in this state. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor, in his discretion, may either surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

Sec. 54-176. Governor not to inquire into guilt or innocence of accused. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided has been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

Sec. 54-177. Recall or new issuance of governor's warrant. The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

Sec. 54-178. Governor seeking extradition to issue warrant to agent to receive accused. Whenever the governor of this state demands a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state, from the executive authority of any other state, or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant, under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

Sec. 54-179. Application by state's attorney, parole board or correction commissioner for return of accused.

(a) When the return to this state of a person charged with crime in this state is required, the state's attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of

its commission, the state in which he is believed to be, including the location of the accused therein, at the time the application is made and certifying that, in the opinion of the state's attorney, the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

(b) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the state's attorney of the county in which the offense was committed, the parole board, or the commissioner of correction, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole and the state in which he is believed to be, including the location of the person therein at the time application is made.

(c) The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge, state the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The state's attorney, parole board or commissioner of correction may also attach such further affidavits and other documents in duplicate as he deems proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavits or of the judgment of convictions or of the sentence, shall be filed in the office of the secreary of the state, to remain of record in that

office. The other copies of all papers shall be forwarded with the governor's requisition.

Sec. 54-180. Immunity of accused to process in civil action arising from same facts. A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

Sec. 54-181. Waiver of accused. Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in sections 54-163 and 54-164 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court having criminal jurisdiction within this state a writing which states that he consents to return to the demanding state; provided, before such waiver is executed or subscribed by such person, such judge shall inform such person of his rights to the issuance or service of a warrant of extradition and to obtain a writ of habeas corpus as provided in section 54-166. If and when such consent has been executed, it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or caused to be delivered to such agent or agents a copy of such consent; provided nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver

procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state.

Sec. 54-182. State's rights not waived. Nothing contained in this chapter shall be deemed to constitute a waiver by the state of its right, power or privilege to try such demanded person for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction.

Sec. 54-183. Trial for crimes other than those specified in extradition requisition. After a person has been brought back to this state by, or after waiver of, extradition proceedings, he may be tried in this state for other crimes which he is charged with having committed here as well as that specified in the requisition for his extradition.

Sec. 54-184. Interpretation of chapter. The provisions of this chapter shall be so interpreted and construed as to effectuate the general purpose to make uniform the law of those states which enact it.

Sec. 54-185. Citation of chapter. This chapter may be cited as the Uniform Criminal Extradition Act.

APPENDIX E: PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

NO. 27 14 34 : SUPERIOR COURT

ANDREW J. NAREL, JR.

PETITIONER

V. JUDICIAL DISTRICT OF DANBURY

**VICTOR LIBURDI, WARDEN
COMMUNITY CORRECTIONAL
CENTER AT BRIDGEPORT**

RESPONDENT

PETITION FOR WRIT OF HABEAS CORPUS

Pursuant to Connecticut General Statutes 54-186, Andrew J. Narel petitions this Court for a Writ of Habeas Corpus and says:

1. That he is being held in lieu of bond at the Bridgeport Correctional Center by Victor Liburdi, Warden thereof, at the request and direction of Charles Kelly and/or Richard Blake, Troopers of the Connecticut State Police.

2. That said Trooper or Troopers arrested the petitioner under the authority of a Rendition Warrant issued by the Governor of Connecticut dated November 28, 1978, upon the request of the Governor of the State of Virginia alleging that he stands charged in that state with committing the crime of Escape on or about April 3, 1975.

3. On September 25, 1975, the charge of being a Fugitive from Justice was dismissed against the petitioner.

a. The hearing was held in the District Court of Rockville, Maryland.

b. The charge was dismissed when the Commonwealth of Virginia failed to appear at the duly convened extradition hearing.

4. A copy of the court clerk's copy of the dismissal is attached hereto as Exhibit I.

5. On September 10, 1976, the petitioner commenced serving a three year sentence at the Federal Correctional Institution, Danbury, Connecticut.

6. On September 16, 1976, a detainer was lodged by the Commonwealth of Virginia at FCI, Danbury against petitioner.

7. A copy of the detainer is attached hereto as Exhibit II.

8. On June 9, 1977, the petitioner filed a Motion for Speedy Trial or for Dismissal of all pending charges in Prince William County, Virginia.

9. A copy of petitioners motion is attached hereto as Exhibit III.

10. Pursuant to Article III and Article V(c) of the Interstate Agreement on Detainers, if a prisoner has made a request for a final disposition of charges underlying the existence of a detainer, and no trial on the matter has been had within one hundred and eighty days of such a request, the underlying indictment, information or complaint must be dismissed with

prejudice, and the detainer shall be of no further force and effect.

11. Petitioner has made such a demand more than one hundred and eighty days prior to the date of this petition, and no trial has been had on the charge underlying the detainer.

12. Petitioner, is not, therefore, a fugitive from justice from the State of Virginia.

13. A governor has no jurisdiction to issue a warrant for the return to the demanding state of a person charged with a crime unless there is probable cause to believe the person is a fugitive from justice.

14. The governor of the State of Connecticut has no jurisdiction to issue a warrant based on a detainer which alleges that the petitioner is a fugitive from the State of Virginia.

15. Continued confinement of the petitioner at the Bridgeport Correctional Center denies petitioner's rights under the 5th, 8th, and 14th Amendments to the United States Constitution and under the First Article sections 8, 9, 10 of the Connecticut Constitution.

WHEREFORE, petitioner prays that this court issue a writ of habeas corpus and order respondents to show cause why they should not immediately release petitioner from custody and should not further be ordered to utterly disregard and hold for naught the purported Virginia detainer for all and every purpose.

ANDREW J. NAREL, JR.

BY: ELLEN B. LUBELL
PUBLIC DEFENDER

Filed December 8, 1978

APPENDIX F: EXCERPTS FROM PETITIONER'S REPLY BRIEF TO THE CONNECTICUT SUPREME COURT

Respondent offers no explanation for his failure to raise the issue previously or any "exceptional circumstances" that would justify an exception to the Court's long-standing policy. Respondent's belated attempt to raise a new issue in this Court is thus in plain violation of this Court's rules of practice and should be rejected. Id.[2]

B. CONNECTICUT COURTS MAY AND SHOULD ENFORCE THE PROTECTIONS OF THE INTERSTATE AGREEMENT ON DETAINERS.

Even should this Court decide to consider respondent's newly-raised contention on the merits, respondent's argument must fail. Respondent fails to recognize the complementary nature of the Extradition Act and Detainer Agreement and the jointly-existing protections that flow from each of these interstate compacts. Cuyler v. Adams, ___ U.S. ___, 66 L.E.2d 641, 650-55 (1981); Moen v. Wilson, 536 P.2d 1129, 189 Colo. 85 (1975); State ex rel. Garner v. Gray, 201 N.W.2d 163, 55 Wis.2d 574 (1972); Thomlinson v.

2. In light of respondent's failure to raise the issue below, it is somewhat surprising that in his brief to this Court respondent accuses petitioner of having "totally ignored" the issue and "attempted obfuscation" thereby. (Resp. Br. at 3.) While it may be that respondent's strident language reflects only the stylistic idiosyncracy of respondent's counsel, to the extent that respondent suggests that petitioner has deliberately attempted to mislead the Court, such a suggestion is inappropriate and unwarranted.

Liburdi, 34 Conn.Supp. 128, 380 A.2d 105, 108 (1977); Bursque v. Moore, 26 Conn.Supp. 469, 475, 227 A.2d 255 (1966). Contrary to the position asserted by respondent, petitioner has a statutory right to a hearing in Connecticut to challenge Virginia's compliance with the Detainer Agreement, Cuyler v. Adams, supra at 654-55; Allen v. Evans, 562 P.2d 752, 753-54 (Colo. 1977); Moen v. Wilson, supra at 1133; State ex rel. Garner v. Gray, supra at 170; and that right may not be circumvented by Virginia's efforts to gain custody of petitioner under the Extradition Act rather than pursuant to the equally applicable provisions of the Detainer Agreement. State ex rel. Garner v. Gray, supra at 168-69; Humphrey v. Cady, 405 U.S. 504, 512 (1972); Baxstrom v. Herold, 383 U.S. 107 (1966).

The law is now clear that when a state seeks custody of an inmate pursuant to the Detainer Agreement, the inmate has the right to a judicial hearing prior to the transfer to challenge the propriety of his custody transfer. Cuyler v. Adams, supra at 654-55; Moen v. Wilson, supra at 1133; State ex rel. Garner v. Gray, supra at 170. At such a hearing, the inmate has the right to challenge the demanding state's compliance with the requirements of both the Extradition Act and the Detainer Agreement. Cuyler v. Adams, supra; Allen v. Evans, supra; Moen v. Wilson, supra; State ex rel. Garner v. Gray, supra.

Thus, had Virginia sought petitioner's transfer pursuant to the Detainer Agreement, petitioner would have been entitled to a hearing in Connecticut to contest Virginia's compliance with the requirements of the Agreement. Allen v. Evans, supra; Moen v. Wilson, supra; State ex rel. Garner v. Gray, supra.

Petitioner contends that Virginia may not frustrate his right to such judicial review by seeking his transfer under the Extradition Act rather than the Detainer Agreement. The provisions of the Extradition Act and the Detainer Agreement are not mutually exclusive, Adams v. Cuyler, 592 F.2d 720, 725 (3d Cir. 1979), aff'd. sub nom., Cuyler v. Adams, ___U.S.___, 66 L.E.2d 241 (1981); rather, as the United States Supreme Court has recently held, they provide parallel statutory mechanisms for interstate transfer of inmates and overlapping statutory protections. Cuyler v. Adams, supra at 650-54. Thus, in Cuyler, the Court held that an inmate being transferred pursuant to the Detainer Agreement is entitled to the statutory hearing provided by the Extradition Act prior to transfer. Id. at 652-54.

Courts have consistently held that a prisoner's rights of review cannot be foreclosed by the demanding state's choice of one of the two acts. The Supreme Court of Colorado has observed in this context,

> "We do not believe that a prisoner's rights to a hearing should turn on whether custody and transfer are sought by the demanding state under the Extradition Act or by the receiving state under the interstate compact (on detainers). Constitutional rights should not hinge upon the selection of the so-called Uniform Act which is to be followed when the result is identical in both cases and when both statutes are used to effect the same result."

Moen v. Wilson, supra at 1133; accord: State ex rel. Niederer v. Cady, 240 N.W.2d. 626, 631, 72 Wis. 2d 311 (1976).

As the Third Circuit Court of Appeals has stated in this regard:

> If the state authorities were to have the option of utilizing either the Extradition Agreement or the Detainer Agreement, the speedy trial provisions of the Agreement and its protection against the abuses of the detainer process could be thwarted.

Adams v. Cuyler, supra at 725.

Indeed, in order to prevent such abuse, it has been held that the Detainer Agreement is the exclusive method of effecting a transfer of prisoners between jurisdictions party to the Agreement. Id.; United States ex rel. Esola v. Groomes, 520 F.2d 830, 837 (3d Cir. 1975); cf., Commonwealth ex rel. Coleman v. Cuyler, 396 A.2d 394, 400, 261 Pa.Super 274 (1978).

In Cuyler v. Adams, supra, the Supreme Court based its ruling on statutory interpretation, holding that the language of the Detainer Agreement did not preempt the parallel provisions of the Extradition Act. Id. at 652-54. Similarly, the language of the Uniform Criminal Extradition Act (adopted by Connecticut, Section 54-157, C.G.S., et seq.) does not purport to deny petitioner the protections of the Detainer Agreement. Section 54-158 expressly provides that a state's duty to extradite is subject not only to the provisions of

the Extradition Act but to "the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof" (emphasis added). The Detainer Agreement is precisely such an act of Congress. As the Supreme Court explicitly held in Cuyler, the Detainer Agreement "is a congressionally sanctioned interstate compact the interpretation of which presents a question of federal law." Id. at 650. "Congressional power to legislate in this area is derived from both the Commerce Clause and the Extradition Clause." Id. at n. 10. The statutory language of the Uniform Criminal Extradition Act in setting forth a state's duties under the Act thus plainly indicates that such duties are subject to the provisions of the Detainer Agreement. Id. at 654; see also Bursque v. Moore, supra at 475; Thomlinson v. Liburdi, supra at 108.

Although statutory construction supports petitioner's right to a pre-transfer hearing, an even more compelling constitutional rationale mandates acceptance of petitioner's argument. The United States Supreme Court has held that a state may not, consistent with the Equal Protection Clause, deprive an individual of rights available under one of two applicable statutes by arbitrarily invoking the statute with lesser protections. Baxstrom v. Herold, 383 U.S. 107 (1966); Humphrey v. Cady, 405 U.S. 504 (1972). In Baxstrom, the Court reviewed two New York statutes pertaining to civil commitment procedures. One of the statutes afforded individuals a right to jury trial prior to commitment, while the other statute denied a similar right to convicted inmates being committed at the end of their penal sentences. The Court held that the arbitrary use

of the different statutory procedures to deny certain individuals a right to jury trial violated the Equal Protection Clause. Id. at 115.

Six years later, the Court considered two Wisconsin statutes similarly providing different procedural protections for commitment of sex offenders. Humphrey v. Cady, supra. Noting that the statutes were on their face each applicable to the same individuals, the Court reiterated its holding in Baxstrom, stating:

> The equal protection claim would seem to be especially persuasive if it develops on remand that petitioner was deprived of a jury determination, or of other procedural protections, merely by the arbitrary decision of the State to seek his commitment under one statute rather than the other.

Id. at 512.

Relying on Baxstrom and Humphrey, the Wisconsin Supreme Court has held that an equal protection violation would occur if a state were allowed to deprive an inmate of his statutory rights under the Extradition Act by seeking custodial transfer under the Detainer Agreement. State ex rel. Garner v. Gray, supra at 168-69. A similar constitutional violation would result if, as here, an inmate were denied his review rights under the Detainer Agreement by a demanding state's reliance on the Extradition Act. Baxstrom v. Herold, supra; Humphrey v. Cady, supra.

Michigan v. Doran, 439 U.S. 282 (1978), the case primarily relied upon by respondent, does not compel a different conclusion. Doran was decided prior to Cuyler and must be read in light of Cuyler's explication of the federal rights created by the Detainer Agreement and the complementary relationship between the Detainer Agreement and the Extradition Act. Cuyler v. Adams, supra at 650-54. Doran did not involve any claim under the Detainer Agreement, nor did the Court in Doran purport to preclude a petitioner's assertion at an extradition hearing of rights existing under other federal law. Indeed, as noted above, the Uniform Criminal Extradition Act specifically requires compliance with "any and all (applicable) acts of Congress." Section 54-158, C.G.S. Respondent's narrow interpretation of Doran fails to recognize the impact of Cuyler and would, in the circumstances presented in this case, give rise to the equal protection violation condemned in Baxstrom, Humphrey and Garner.

Moreover, even applying the standards for extradition recognized in Doran and traditionally utilized by this Court, an individual may be extradited only if he is a fugitive from the demanding state and is substantially charged in that state.[3] See Glavin v. Warden, 163 Conn. 394, 311 A.2d 86 (1972); Section 54-159, C.G.S. Since an inmate deprived of his right under the Detainer

3. Doran, furthermore, recognizes the petitioner's right to challenge "whether the extradition documents on their face are in order," Michigan v. Doran, supra at 289, a challenge which may legitimately encompass review of the demanding state's compliance with the Detainer Agreement provisions.

Agreement to a speedy trial is entitled to dismissal of the charge against him, he is no longer a "fugitive" from the justice of the demanding state, Bursque v. Moore, supra at 475; Thomlinson v. Liburdi, supra at 108, and/or is no longer "substantially charged" in the demanding state. Petitioner's claim under the Detainer Agreement may thus be deemed to fall within the areas of review established by Doran. Id.

Appellant thus submits that he has a right to judicial review in Connecticut of the propriety under both the Detainer Agreement and Extradition Act of his custody transfer to Virginia. Petitioner further submits that such right cannot be denied by Virginia's invocation of the Extradition Act rather than the Detainer Agreement as the statutory vehicle for transfer.

It should be noted that significant policy considerations support petitioner's position. Connecticut has an interest in insuring that its officials comply with Connecticut's statutes and in enforcing any violation by such officials of their statutory obligations. Judicial review in Connecticut of official compliance with the provisions of the Detainer Agreement will help insure that if Connecticut prison officials fail to comply with the Agreement, the violation will be known to Connecticut's supervisory officials at once, thus allowing prompt corrective action and a likely deterrent effect on future conduct. Cf., State v. Anonymous, 36 Conn.Supp. 326, 332, 419 A.2d 904 (1980); People v. Lincoln, 601 P.2d 641, 644 (Colo.Ct.App. 1979). Moreover, judicial review in Connecticut will insure that Connecticut inmates are not transferred in violation of Connecticut's statutory standards, thus promoting

the rehabilitation goals underlying the Detainer Agreement. See Thomlinson v. Liburdi, supra at 106-07; Hearings on S.B.No. 531, Joint Standing Committee on Federal and Intergovernmental Relations, 1957 Sess., pp. 37-38; United States v. Mauro, 436 U.S. 340, 349-51 (1978).

Equally important, judicial resolution of the issues presented by a claim such as petitioner's is plainly best accomplished in this state, where the inmate's compliance with Detainer Agreement obligations and the actions of his jailers can best be assessed. The key witnesses are present in the state, local prison records are available, and a prompt judicial hearing is feasible prior to the transfer.[4] Cf., Morrissey v. Brewer, 408 U.S. 471, 485 (1972). Indeed, the hearing can easily be held at the same time as the hearing provided under Section 54-186 of the Extradition Act. See Cuyler v. Adams, supra at 655 n. 15.

For all these reasons, petitioner respectfully submits that he is entitled to litigate his claims in the courts of this state.

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4. It should be noted that it is unlikely that witnesses from the demanding state would be necessary at such a hearing, since if the paperwork required by the Detainer Agreement is in order, the only litigable issue would be whether the 120 day period for disposition had expired.

Opposition

Office - Supreme Court, U.S.
FILED
MAR 19 1982
ALEXANDER L. STEVAS,
CLERK

In The
Supreme Court Of The United States

OCTOBER TERM, 1981

NO. 81-1556

ANDREW J. NAREL, JR.
Petitioner,

v.

VICTOR LIBURDI, WARDEN,
COMMUNITY CORRECTIONAL CENTER, BRIDGEPORT
Respondent

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE CONNECTICUT SUPREME COURT

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QUESTION PRESENTED

In a habeas corpus challenge to his extradition, may a person raise a claim arising under the Interstate Agreement on Detainers that he has been denied his right to a prompt trial?

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STATUTES AND RULES INVOLVED

Rule 17.1
Revised Rules of the Supreme Court of the United States

Considerations Governing Review on Certiorari

1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an

important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

This case involves the interpretation of two uniform multi-state acts, the Interstate Agreement on Detainers and the Uniform Criminal Extradition Act. The statutes are reprinted in full in Appendices C and D of the Petition.

STATEMENT OF THE CASE

As its statement of the case, the respondent adopts, with only the minor modification made at the end, the following excerpt from the opinion of the Connecticut Supreme Court (Petitioner's Appendix at 1a-2a):

> In 1977, the plaintiff was being held in custody in the federal correctional institute at Danbury, Connecticut. On September 6, 1977, the commonwealth of Virginia filed a detainer with the prison authorities at Danbury notifying them of an outstanding escape charge. When the plaintiff learned of the detainer he contacted Robert Flynn, an official in the records department at Danbury, and orally requested Flynn to send a notice to Virginia seeking prompt disposition of the escape charge pursuant to the Interstate Agreement on Detainers, 18 U.S.C. Ap. (1976), pp. 1395-98; Va. Code Sec.53-304.1. Flynn refused to send the notice and told the plaintiff to file his own motion for a speedy trial. The plaintiff thereupon prepared a notarized motion for speedy trial which he sent to the Manassas, Virginia court. This motion, the receipt of which was acknowledged by the clerk's office at the 31st Judicial District of Virginia, Prince William General District Court, Manassas, Virginia, made specific reference to the details of the charge of escape lodged against the plaintiff the commonwealth of Virginia on September 6,

> 1977, and requested a speedy trial of the charge. The motion, which was prepared on a form made available to the plaintiff at the federal prison, was sworn to before Ron Simpson, a caseworker at Danbury.
>
> The Virginia authorities took no action on the pending escape charge against the plaintiff until he had completed his federal sentence and was released from federal custody on September 1, 1978. At that time, he was arrested on a fugitive warrant issued by the commonwealth of Virginia and thereafter was held under a rendition warrant issued by the governor of this state as a result of a requisition made upon him by the governor of Virginia. The plaintiff filed a habeas corpus petition which. . . .

sought a release from custody on the grounds that, among other things, he had been denied his rights under the Detainers Act (Petition at 4). The trial court dismissed the petition (Petitioner's Appendix at 12a) and, in a unanimous opinion, the Connecticut Supreme Court affirmed (Petitioner's Appendix at 1a-8a).

REASONS FOR THE DENIAL OF THE WRIT

I. THE DECISION OF THE CONNECTICUT SUPREME COURT DOES NOT CONFLICT WITH THAT OF ANY OTHER COURT.

Rule 17.1(b) of the United States Supreme Court Rules provides that a critical consideration governing review on certiorari is whether the state court has decided the question presented in a way in conflict with that of other state courts or of the federal courts of appeal. The sole conflict of that nature alleged by the petitioner is one that supposedly exists between the ruling below and similar ones of the Third Circuit (Petition at 7).

The petitioner cites three cases which purportedly reveal the Third Circuit to have taken the position that "the Detainer Agreement is the exclusive method of effecting a transfer of prisoners between party states" (Id.). Even if those cases support such a proposition,[1] they do not in any way conflict with the ruling at bar. In the present case the petitioner

---

[1] One of the opinions cited, Commonwealth ex rel. Coleman v. Cuyler, 261 Pa. Super. 274, 396 A.2d 394 (1978), which, of course, is not even a Third Circuit decision, stated only that it "agree[d] with the federal courts that procedure under the Detainers Agreement should be preferred over other means of extraditing sentenced prisoners, whenever both the receiving and sending state are parties to the Agreement." 261 Pa. Super. 274, 396 A.2d at 400 (emphasis added).

had been released from custody at the time that extradition proceedings against him commenced (Petitioner's Appendix at 2a). Since, then, the petitioner was not a prisoner at that time, this case simply does not raise the issue addressed by the Third Circuit of whether the Detainer Act is "the exclusive method of effecting a transfer of prisoners between party states."[2]

Nor, contrary to the defendant's suggestion, does the opinion below conflict with this Court's decision in Cuyler v. Adams, 101 S. Ct. 703 (1981). See Sup. Ct. R. 17.1(c). The Adams court held that a prisoner is entitled to the procedural protections in the Extradition Act before being transferred to another jurisdiction pursuant to Article IV of the Detainer Agreement. It said nothing at all to support the petitioner's contention that a person is entitled to litigate claims based on Article III of the Detainer Act before being transferred to another jurisdiction pursuant to the Extradition Act.

---

[2]The fact that Connecticut authorities apparently waited until the expiration of the petitioner's prison term to arrest him as a fugitive from justice may, of course, generate other issues. Conceivably the petitioner may have a defense to the underlying criminal charge based on his constitutional right to a speedy trial, see Barker v. Wingo, 407 U.S. 514 (1972), or on the due process clause. See United States v. Lovasco, 431 U.S. 783 (1977). After this court's decision in Michigan v. Doran, 439 U.S. 282 (1978), however, it is clear that these defenses, even if valid, are not an obstacle to extradition. See infra pp. 5, 9.

What this court did say in Adams tends to justify precisely the opposition conclusion. The opinion first noted that a person whose extradition is sought initially has a right to a "pre-transfer hearing" at which he is informed of his rights under the Extradition Act. 101 S. Ct. at 709 & n. 11.[3] An alleged fugitive can then challenge his extradition at a "later habeas corpus hearing." Id. at 709 n.11. The contours of this hearing, however, were specifically confined to those the court had previously prescribed in Michigan v. Doran, 439 U.S. 282 (1978):

> Once the governor has granted extradition, a court considering release on habeas corpus can do no more than decide (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive. These are historic facts readily verifiable.

---

[3]The petitioner, of course, received such a hearing (State's Appendix C).

Id. at 289; Adams, 101 S. Ct. at 709 n.11.[4] Hence, despite its opportunity to do so, the Adams Court chose not to enlarge the narrow set of issues cognizable in a habeas corpus challenge to extradition. On the contrary, it sanctioned exactly the limited inquiry that the trial court in this case conducted (Petitioner's Appendix at 12a).

---

[4]The fact that the Adams Court has thus apparently reaffirmed Doran refutes the petitioner's suggestion that review of the holding below is especially important to clarify the relationship between these two cases (Petition at 11).

II. THE ISSUE IN THIS CASE IS UNIQUE AND THUS A DECISION ON THE MERITS BY THIS COURT WOULD HAVE LITTLE PRECEDENTIAL VALUE.

Research has failed to disclose any decision other than the one now questioned that has addressed the precise issue of whether, after Doran, a person challenging his extradition may raise a speedy trial claim rooted in the Agreement on Detainers. This result is not at all surprising. Only in the novel circumstances of an asylum state prisoner originally seeking a speedy trial in the charging state and then later resisting the extradition process that would transport him back to that state can the issue at bar arise. This court should not allocate its scarce resources to the review of a claim with such little apparent likelihood of repetition. Because, then, a decision by this court on the question presented would have minimal precedential value, it should decline to issue a writ of certiorari.

III. APPLICATION OF ANALOGOUS AUTHORITIES CONFIRMS THAT THE DECISION OF THE CONNECTICUT SUPREME COURT WAS CORRECT.

Nothing said above is meant to imply that the issue of compliance with the speedy trial provisions of the Detainer Act has not received judicial attention. Invariably defendants raising such claims, however, have done so at some point after their transfer to the charging state.[5] E.g., Rockmore v. State, 21 Ariz. App. 388, 519 P.2d 877 (1974)(pre-trial habeas corpus); United States v. Hutchins, 489 F. Supp. 710 (N.D. Ind. 1980)(motion to dismiss); Pittman v. State, 301 A.2d 509 (Del. 1973); Nelms v. State, 532 S.W.2d 923 (Tenn. 1976)(direct appeal of conviction). That these claims proved successful in all the cited cases suggests that the petitioner

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[5]Usually these transfers have been accomplished through provisions of the Detainer Act rather than the Extradition Act. Article V(a) of the former statute provides:

> In response to a request made under article III or article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had.

Petitioner's Appendix C.

will suffer no prejudice if litigation of his speedy trial claim is similarly postponed until his return to the charging state.

Several post-Doran courts have determined that an alleged fugitive who desires to assert a denial of his constitutional right to a speedy trial must do so in the demanding rather than the asylum state. Simmons v. Leach, 626 P.2d 164 (Colo. 1981); Collins v. Waters, 245 Ga. 841, 268 S.E.2d 154 (1980); Hutson v. Stoner, 244 Ga. 52, 257 S.E.2d 539, 540, cert. denied, 444 U.S. 967 (1979). Logically, if an asylum state court has no authority to consider a claimed deprivation of the constitutional right to speedy trial it must follow that such a court has no authority to entertain a speedy trial argument, such as the one here, based solely on statutory authority.

Even if this logic were flawed, the plain language of Article III(e) of the Detainer Act reveals that by requesting transfer under Article III the petitioner has simply waived any objection to his extradition (Petition at 4).[6] Given these

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[6] Article III(e) provides:

> Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment

considerations it is apparent that the Connecticut Supreme Court correctly authorized the petitioner's extradition and thus its decision does not warrant review by this court.

Footnote 6 (continued)

> in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for a writ of certiorari.

Respectfully submitted,

VICTOR LIBURDI, WARDEN
COMMUNITY CORRECTIONAL
CENTER
BRIDGEPORT, CONNECTICUT
Respondent

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I hereby certify that three copies of this brief have been mailed by March 19, 1982, to David S. Golub, Esquire, Silver, Golub & Sandak, 733 Summer Street, Stamford, Connecticut 06905, counsel of record for petitioner.

/s/CARL SCHUMAN
CARL SCHUMAN
Assistant State's
Attorney

Appendix

In The
Supreme Court Of The United States

OCTOBER TERM, 1981

NO. 81-1556

ANDREW J. NAREL, JR.
Petitioner,

v.

VICTOR LIBURDI, WARDEN,
COMMUNITY CORRECTIONAL CENTER, BRIDGEPORT
Respondent

APPENDIX

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APPENDIX A

REQUISITION WARRANT OF THE COMMONWEALTH OF VIRGINIA

COMMONWEALTH OF VIRGINIA

EXECUTIVE DEPARTMENT

THE GOVERNOR OF THE STATE OF VIRGINIA To The GOVERNOR OF THE STATE OF CONNECTICUT

WHEREAS, It appears by application, affidavit, warrant, etc. which are hereunto annexed and which I certify to be authentic and duly authenticated in accordance with the Laws of this State that

ANDREW J. NAREL, JR.

stands charged with the crime of Escape which I certify to be a crime under the Laws of this State committed in the County of Prince William in this State, and it having been represented to me that he has fled from the justice of this State and may have taken refuge in the State of Connecticut

NOW THEREFORE, pursuant to the provisions of the Constitution and the Laws of the United States in such case made and provided, I do hereby require that the said ANDREW J. NAREL, JR. be apprehended and delivered to Captain James Snodgrass or designees who are hereby authorized to receive and convey him to the State of Virginia, there to be dealt with according to Law.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the Commonwealth at the Capitol in the City of Richmond, this 21st day of November in the year of our Lord, one thousand nine hundred and seventy-eight and in the 203rd year of the Commonwealth.

John N. Delton

By the Governor

(Signed)
Secretary of the Commonwealth

[Supplemental Record at 2-3, Narel v. Liburdi, No. 9561 (Conn. 1981).]

APPENDIX B

RENDITION WARRANT OF THE STATE OF CONNECTICUT AND CERTIFICATE OF ARREST

STATE OF CONNECTICUT
EXECUTIVE DEPARTMENT

ELLA GRASSO
GOVERNOR OF THE STATE OF CONNECTICUT

To the Sheriff of the County of Fairfield or either of his Deputies, and to the Sheriffs of the several Counties in said State, or either of their Deputies, and to any State Policeman of said State, and to Police Officers of any City or Town in said State, or to any or either of them:

WHEREAS, it has been represented to me by the Governor of the State of Virginia that Andrew J. Narel, Jr. stands charged with the crime of Escape committed in the County of Prince William in said State, on or about April 3, 1975, and that he has fled from justice in that State, and has taken refuge in the State of Connecticut; and the Governor of Virginia having in pursuance of the Constitution and laws of the United States, demanded of me that I shall cause the said Andrew J. Narel, Jr. to be Arrested and Delivered to Captain James Snodgrass or Designees who is duly authorized to receive him into his custody and convey him back to the said State of Virginia.

AND WHEREAS, the said representation and demand is accompanied by properly attested copies of the proceedings in said State of Virginia against the said Andrew J. Narel, Jr. and with the proper supporting documents, whereby the said Andrew J. Narel, Jr. is charged with the said crime and with having fled from said State, and taken refuge in the State of Connecticut, which said proceedings are certified by the Governor of Virginia to be duly authenticated; and, whereas, I find that said demand is conformable to law and ought to be complied with.

YOU ARE THEREFORE REQUIRED TO ARREST AND SECURE the said Andrew J. Narel, Jr. wherever he may be found within the State and to deliver him into the custody of said Captain James Snodgrass or Designees to be taken back to said State, from which he fled, pursuant to the said requisition; and of this precept and your doings endorsed thereon you will make return to me.

Given under my hand and the Seal of the State at the City of Hartford, this 28th day of November in the year of our Lord one thousand nine hundred and seventy-eight.

Ella Grasso
GOVERNOR

By Her Excellency the Governor:

Agnes L. Kerr
Deputy Secretary of the State

GOVERNOR'S
WARRANT: By virtue of the within and foregoing complaint and warrant, I arrested the body of the within named accused, and read the same in the hearing of said accused in the town of Danbury, State of Connecticut on this date 11-29-78 and had said accused herein the GA-3 Superior Court for examination.

Attest Tpr. Richard E. Blake
Connecticut State Police.

[Supplemental Record at 10-11, Narel v. Liburdi, No. 9561 (Conn. 1981).]

APPENDIX C

COMPLIANCE WITH PRE-TRANSFER HEARING REQUIREMENT OF UNIFORM CRIMINAL EXTRADITION ACT, CONNECTICUT GENERAL STATUTES § 54-166

JUDGE'S
ENDORSEMENT:

The within named accused was presented before the undersigned a judge of the Circuit Court, a court having criminal jurisdiction in this state on 11-29-78. The accused was informed of the demand for his surrender, of the crime with which he is charged, of his right to demand and procure legal counsel, of his right to test the legality of his arrest. The accused through Atty. Ellen Lubell, counsel for the accused stated he desired to test the legality of the arrest and the undersigned granted Narel until December 15, 1978 to file a writ of Habeas Corpus. The accused is remanded into the custody of Tpr. Richard E. Blake of the Connecticut State Police until said date.

Moraghan
A Judge of the Superior
Court in Danbury

[Supplemental Record at 12, Narel v. Liburdi, No. 9561 (Conn. 1981).]